IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 8593 of 2005
Date of Decision: 25.9.2007

Harcharan Singh Khanna ...Petitioner

Versus

Sikh Educational Society and others ...Respondents

CORAM:- HON'BLE MR. JUSTICE K.S.GAREWAL
HON'BLE MR. JUSTICE R.S. MADAN

Present: Mr. JS Puri, Advocate,
for the petitioner.

Mr. RS Ahluwalia, Advocate, for
the respondents 1 and 2.

Mr. Inderjit Sharma, Advocate, for
Mr. Suvir Sehgal, Advocate, for
respondent 4.

K.S. GAREWAL, J.

Harcharan Singh Khanna joined as Lecturer in History in Sikh National College, Banga in 1965. This college is run by Sikh Educational Society, Chandigarh. In 1997 the petitioner was transferred to Sri Guru Gobind Singh College, Chandigarh also under the same Society. The petitioner and retired on September 30, 1997 on attaining the age of 60 years.

The petitioner received Rs. 59,602/- on account of 75% gratuity on January 15, 1998. The College only paid 75% of the gratuity and withheld the rest, stating that this would be released after implementation of

pension/gratuity scheme by the government. The petitioner's gratuity had been computed on the basis of unrevised pay scale whereas the petitioner's pay was revised from January 1, 1996 and fixed at Rs. 15760/- in the scale of Rs. 12000-420-18300. This is apparent from the certificate issued by the College Principal dated September 9, 2003 (Annexure P/4), which reads as under:-

> "Certified that Sh. H.S. Khanna has worked in this College as Lecturer in History. He joined his duties in this college from 17.8.1967 and retired from service w.e.f. 30.9.1997 after attaining the age of superannuation. He was drawing a basic pay of Rs. 5250/- PM in the unrevised pay scale of Rs. 3700-5700 which was revised from 1.1.1996 and his basic pay was fixed at Rs. 15760/- in the revised pay scale of Rs. 12000-420-18300 at the time of his retirement."

The petitoiner sought re-calculation of his gratuity claiming dearness allowance and relied upon the instructions of the university dated February 28, 1997 (Annexure P/5) in respect of raising of maximum limit of gratuity to Rs. 2.50 lacs with effect from April 1, 1995.

Finally in response to many representations of the petitioner, the matter was considered by the Sikh Educational Society, Chandigarh, on October 9, 2003 (Annexure P/12). It was recorded in this order that the revised pay of the petitoiner on the date of his retirement was Rs. 15760/- in the revised scale of Rs. 12000-18300. It was also noted that in terms of Regulation 7 of Chapter VIII (E) of the Panjab University Calendar Volume-I "... gratuity of sum equivalent to one fourth of his ** 'Pay' law drawn for each completed six monthly period of qualifying service subject

to 16-1/2 (sixteen and half) times the ** 'Pay' provided that in no case gratuity shall exceed the amount as fixed by the Punjab Government from time to time for its employees....” While concluding, it was noted that the Chandigarh Administration had not provided grant of gratuity or pension to the employees of the non-government affiliated colleges. However, as a gesture of goodwill, the Sikh Educational Society decided regarding payment of gratuity to the retirees in principle. The age of retirement for the purpose of gratuity will be 58 years. The petitioner's representation was thus rejected.

In the joint written statement filed by the Sikh Educational Society and Siri Guru Gobind Singh College, it was pleaded that the petition was not maintainable, as the respondent was a Society not amenable to writ jurisdiction. It was also pleaded that the petitioner was trying to enforce a contract of personal service against a private body through the present petition filed by him. It was reiterated that there was no statutory rules for payment of gratuity to a retiree but the governing body has decided in principle to pay gratuity to its retirees and the age for payment of gratuity has been fixed as 58 years. This was as per the the Panjab University Calendar which provided that the amount of gratuity should not exceed the amount fixed by the Punjab Government. The employees of the Punjab Government retire at the age of 58 years, therefore, the same age of retirement has been fixed for the purpose of payment of gratuity.

Gratuity is something payable to an employee on the termination of his employment, which may be on superannuation, on retirement or resignation, on death (in which case gratuity would be paid to the heirs of the deceased employee) or on disablement due to accident or

disease. Furthermore, gratuity is calculated as a sum payable based on the last drawn salary. Therefore, it follows that the last drawn salary on the date of superannuation has to be considered. You cannot have a situation where you retire an employee on superannuation on attaining the age of 60 years but pay gratuity to him in accordance with what he was drawing when he completed 58 years. This is what the respondents have sought to contend, age of retirement for the purpose of gratuity would be 58 years.

The petitioner retired on September 30, 1997 on attaining the age of 60 years. He must receive gratuity on his last drawn pay and not by considering his age of retirement to be 58 years.

For the aforestated reasons, this petition is allowed, Annexures P/12 and P/13 are hereby quashed and it is directed that the respondents would make payment of gratuity to the petitioner on the basis of the revised pay applicable from January 1, 1996 and on the basis of his last drawn revised pay. The balance amount of Rs. 1,65,048/- (subject to computation) shall be paid to the petitioner within two months from today at the rate of 7.5% interest (from the date it is due till the date of payment).

The petitioner shall also be entitled to costs of Rs. 7500/-.

(K.S. GAREWAL)
JUDGE

25.9.2007 **(R.S. MADAN)**
prem **JUDGE**